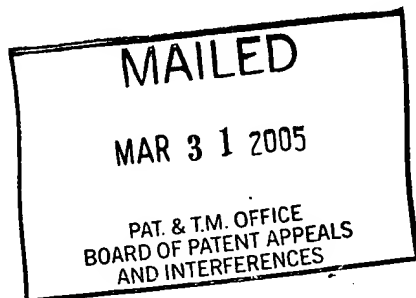




## UNITED STATES PATENT AND TRADEMARK OFFICE

DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES  
BOX INTERFERENCE, WASHINGTON, D.C. 20231

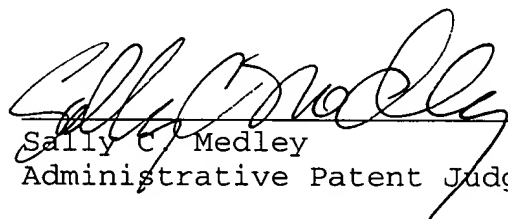
Filed by: Sally C. Medley  
Telephone: (571) 272-9797  
Facsimile: (571) 273-0042



Applicant: Harper  
Application No.: 09/890,289  
Filed: 11/02/01  
For: Antioxidant compositions and  
methods for companion animals

The above-identified application or patent has been forwarded to the Board of Patent Appeals and Interferences because it is adjudged to interfere with another application or patent. An interference has been declared. The interference is designated as No. 105,279.

Notice is hereby given the parties of the requirement of the law for filing in the Patent and Trademark Office a copy of any agreement "in connection with or in contemplation of the termination of the interference." 35 U.S.C. § 135(c).

  
Sally C. Medley  
Administrative Patent Judge

## INTERFERENCE DIGEST

Interference No. 105,279

Paper No.

Name: Jean E. Harper

Serial No.: 09/890,289

Patent No.

Title: Antioxidant compositions and methods for companion animals

Filed: 11/02/01

Interference with Hayek

### DECISION ON MOTIONS

Administrative Patent Judge, \_\_\_\_\_ Dated, \_\_\_\_\_

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### FINAL DECISION

Board of Patent Appeals and Interferences, \_\_\_\_\_ Dated, \_\_\_\_\_

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Court, \_\_\_\_\_ Dated, \_\_\_\_\_

### REMARKS

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This should be placed in each application or patent involved in interference in addition to the interference letters.

Filed by: Sally C. Medley<sup>1</sup>  
Administrative Patent Judge  
Mail Stop Interference  
P.O. Box 1450  
Alexandria Va 22313-1450  
Tel: 571-272-9797  
Fax: 571-273-0042

Filed  
31 March 2005

UNITED STATES PATENT AND TRADEMARK OFFICE

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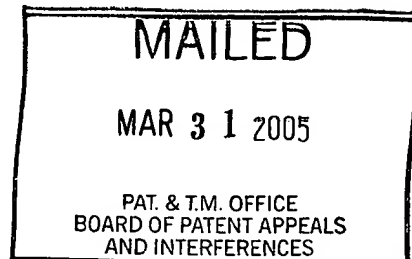
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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MICHAEL G. HAYEK  
Junior Party  
(Patent 6,310,090),

v.

JEAN E. HARPER  
Senior Party  
(Application 09/890,289).



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Patent Interference No. 105,279

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**DECLARATION**

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties.

Details of the application(s), patent (if any), reissue application (if any), count(s) and claims

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<sup>1</sup> As part of Board efforts under the Government Paperwork Elimination Act, signatures on papers originating from the Board are being phased out in favor of a completely electronic record. Consequently, subsequent papers in this case originating at the Board will not have signatures. The signature requirements for the parties have not changed. See, e.g., 37 C.F.R. § 10.18

designated as corresponding or as not corresponding to the count(s) appear in Parts E and F of this DECLARATION.

**Part B. Judge managing the interference**

Administrative Patent Judge Sally C. Medley has been designated to manage the interference. 37 CFR § 41.104(a) [Bd. R. 104(a)].

**Part C. Standing order**

A Trial Section STANDING ORDER [SO] accompanies this DECLARATION. The STANDING ORDER applies to this interference.

The Board is conducting a DVD pilot project. A copy of the procedure is attached to this order.

**Part D. Initial conference call**

A telephone conference call to discuss the interference is set for **1:30 p.m. on 26 May 2005** (the Board will initiate the call).

No later than **two business days** prior to the conference call, each party shall file and serve by facsimile (SO ¶ 4.5) a list of the motions (Bd. R. 120; Bd. R. 204; SO ¶ 26) the party intends to file.

A sample schedule for taking action during the motion phase appears as Form 2 in the STANDING ORDER<sup>2</sup>. Counsel are encouraged to discuss the schedule prior to the conference call and to agree on dates for taking action. A typical motion period lasts approximately eight (8) months. Counsel should be prepared to justify any request for a shorter or longer period.

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<sup>2</sup> Default times for time periods 1-10 are attached.

The Board is conducting an electronic filing pilot project. A copy of the procedure is attached to this order. Counsel should be prepared to discuss participation in the pilot project.

**Part E. Identification and order of the parties**

Junior Party

Named inventor: MICHAEL G. HAYEK, Dayton, OH

Patent: 6,310,090, granted 30 October 2001, based on application 09/579,694, filed 26 May 2000

Title: Process and product for enhancing immune response in companion animals using a combination of antioxidants

Assignee: The Iams Company

Accorded Benefit: 60/136,176, filed 27 May 1999

Senior Party

Named Inventors: JEAN E. HARPER

Application: 09/890,289, filed 2 November 2001

Title: Antioxidant compositions and methods for companion animals

Assignee: Mars Incorporated

Accorded Benefit: PCT/GB00/00270, filed 31 January 2000, GB0018769.0, filed 31 July 2000, GB09928549.6, filed 2 December 1999, GB9902051.3, filed 29 January 1999

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. Bd. R. 154(c)(1). The senior party is responsible for initiating settlement discussions. SO ¶ 18.

**Part F. Count and claims of the parties**

Count 1

Claim 48 of Harper application 09/890,289

or

Claim 49 of Harper application 09/890,289

or

Claim 50 of Harper application 09/890,289

or

Claim 3 of Hayek patent 6,310,090

or

Claim 7 of Hayek patent 6,310,090

or

Claim 8 of Hayek patent 6,310,090

Count 2

Claim 52 of Harper application 09/890,289

or

Claim 53 of Harper application 09/890,289

or

Claim 54 of Harper application 09/890,289

or

Claim 1 of Hayek patent 6,310,090

or

Claim 2 of Hayek patent 6,310,090

The claims of the parties are:

Hayek: 1-8

Harper: 48-54

The claims of the parties which correspond to Count 1 are:

Hayek: 3-8

Harper: 48-51

The claims of the parties which correspond to Count 2 are:

Hayek: 1-2

Harper: 52-54

**Part G. Heading to be used on papers**

The heading in SO Form 1 must be used on all papers filed in this interference. See SO

¶ 7.2.1. The administrative patent judge and parties must be indicated as follows:

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
(Administrative Patent Judge Sally C. Medley)

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MICHAEL G. HAYEK  
Junior Party  
(Patent 6,310,090),

v.

JEAN E. HARPER  
Senior Party  
(Application 09/890,289).

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Patent Interference No. 105,279

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**Part H. Order form for requesting file copies**

When requesting copies of files, use of SO Form 4 will greatly expedite processing of the request. Please attach a copy of Part E of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.



Enc:

Copy of STANDING ORDER  
Copy U.S. Patent 6,310,090  
Copy of claims of application 09/890,289  
Copy of default times for time periods 1-10  
Copy of e-filing pilot project order  
Copy of DVD pilot project order

Revised September 2004

cc (via overnight delivery):

Attorney for Hayek:

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Intellectual Property Division  
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Tel: 713-651-5151